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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

13-CR-70 (RA)

5 LORENZO ULLOLA ROSARIO,

6 Defendant.

Plea

7 -----x

8 New York, N.Y.
9 February 5, 2016
11:21 a.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: ANDREW J. DeFILIPPIS, ESQ.

Assistant United States Attorney

18 THE BLANCH LAW FIRM, P.C.

Attorneys for Defendant

19 BY: BRADLEY L. HENRY, ESQ.

20 ALSO PRESENT: CRISTINA WEISZ, Interpreter (Spanish)

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(Case called)

MR. DeFILIPPIS: Good morning, your Honor. Andrew DeFilippis for the government.

THE COURT: Good morning.

MR. HENRY: Good morning, your Honor. Brad Henry for Mr. Ullola, who is seated to my right.

THE COURT: Good morning. Good morning to you, Mr. Ullola.

I'm sorry to get started a little bit late today. We're just running a little bit behind.

I'm going to note for the record that Mr. Ullola is being assisted by a Spanish interpreter. If at any time you're having trouble understanding any of the translations or just the substance of what I'm saying and have any questions, just feel free to raise your hand, let your attorney know, let me know, and we'll either clarify the translation or either your attorney or I will answer any questions that you have, okay?

THE DEFENDANT: Okay.

THE COURT: So I understand that you wish to plead guilty to a lesser included offense of Count One in the indictment, is that correct?

THE DEFENDANT: Yes.

THE COURT: Before deciding whether to accept your plea, I'm going to ask you certain questions so that I can be sure that you understand your rights and that you're pleading

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1 guilty voluntarily because you are guilty and not for some
2 other reason, so it's important that you answer my questions
3 honestly and completely.

4 Ms. Cavale, please place the defendant under oath.

5 (Defendant sworn)

6 THE COURT: All right. So you are now under oath so
7 you should know that if you answer any of my questions falsely,
8 you may be charged with a separate crime of perjury. Do you
9 understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. I'm going to start by asking
12 you some questions to ensure that you're competent to plead
13 guilty.

14 How old are you?

15 THE DEFENDANT: I'm 26.

16 THE COURT: How far have you gone in school?

17 THE DEFENDANT: I completed high school and I started
18 university in my country.

19 THE COURT: Have you ever been treated or hospitalized
20 for mental illness?

21 THE DEFENDANT: No.

22 THE COURT: Have you ever been addicted to drugs or to
23 alcohol?

24 THE DEFENDANT: No.

25 THE COURT: In the past 24 hours have you taken any

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1 drugs, medicine, or pills or drunk any alcoholic beverages?

2 THE DEFENDANT: No.

3 THE COURT: Is your mind clear today? Do you
4 understand what's happening in these proceedings?

5 THE DEFENDANT: Yes.

6 THE COURT: Does either counsel have any doubt as to
7 the defendant's competence to plead at this time?

8 MR. DeFILIPPIS: No, your Honor.

9 MR. HENRY: No, your Honor.

10 THE COURT: All right. So on the basis of
11 Mr. Ullola's responses to my questions, my observations of his
12 demeanor here in court, and representations of counsel, I find
13 that he's fully competent to enter an informed plea of guilty
14 at this time.

15 Have you had enough time and opportunity to discuss
16 your case with your attorney, including the nature of the
17 charges to which you intend to plead guilty, any possible
18 defenses to the charges, and the rights that you'll be giving
19 up by pleading guilty?

20 THE DEFENDANT: Yes.

21 THE COURT: In particular have you had enough time and
22 opportunity to discuss the possible immigration consequences of
23 your plea with your attorney?

24 THE DEFENDANT: Yes.

25 THE COURT: Are you satisfied with your attorney's

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1 representation of you?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. Now what I'm going to do is
4 I'm going to explain certain constitutional rights that you
5 have. These are rights that you would be giving up if you
6 entered a guilty plea.

7 Under the Constitution and laws of the United States,
8 you have a right to plead not guilty to the charge in the
9 indictment. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: If you did plead not guilty, you'd be
12 entitled under the Constitution to a speedy and public trial by
13 a jury of those charges. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: In advance of trial you would have the
16 opportunity, if you haven't had it already, to seek suppression
17 of any or all evidence against you on the basis that it was
18 obtained in violation of the Constitution. Do you understand
19 that?

20 THE DEFENDANT: Yes.

21 THE COURT: At trial you'd be presumed to be innocent.
22 That means that you would not have to prove that you're
23 innocent. Instead the government would need to prove beyond a
24 reasonable doubt that you were guilty before you could be found
25 guilty, so even if you did nothing, you said nothing at trial,

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1 you could not be convicted unless a jury of 12 people agreed
2 unanimously that you're guilty. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: During trial the witnesses for the
5 prosecution would have to come to court and testify in your
6 presence, where you could see them and you could hear them and
7 your lawyer could cross-examine them. If you wanted to, your
8 lawyer could offer evidence on your behalf and you would be
9 able to use the Court's power to compel witnesses to come to
10 court and testify truthfully on your behalf, even if they
11 didn't want to come. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: At trial you would have the right to
14 testify if you wanted to, but you'd also have the right not to
15 testify, and if you chose not to testify, that could not be
16 used against you in any way. No inference or suggestion of
17 guilt could be made from the fact that you chose not to
18 testify. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: At trial and at every stage of your case,
21 you'd be entitled to be represented by an attorney, and if you
22 could not afford an attorney, one would be appointed at public
23 expense free of cost to represent you. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: As I said before, you have the right to

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1 plead not guilty, so even right now as you sit here for
2 purposes of entering a guilty plea, you have the right to
3 change your mind and go to trial, but if you do plead guilty
4 and I accept your plea, there will be no trial and you will
5 give up the other rights that I just described. Do you
6 understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: If you plead guilty, I will enter a
9 judgment of guilty and I will sentence you. I know that you're
10 going to participate in the Young Adult Opportunity Program,
11 but ultimately I will sentence you based on whatever
12 submissions I get from you and your attorney and the government
13 and a presentence report prepared by the probation department.
14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: There will be no appeal with respect to
17 whether the government could use the evidence it has against
18 you or with respect to whether you did or did not commit the
19 crime. Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: In addition, if you choose to plead
22 guilty, you have to give up your right not to incriminate
23 yourself since today I'm going to ask you questions in court in
24 order to satisfy myself that you are in fact guilty as charged.
25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: Now I understand that you seek to plead
3 guilty to a lesser included offense of Count One in the
4 indictment, which charges you with conspiracy to distribute and
5 possess with intent to distribute mixtures and substances
6 containing a detectable amount of heroin.

7 Mr. DeFilippis, could you please state the elements of
8 the offense in question.

9 MR. DeFILIPPIS: Yes, your Honor.

10 There are two elements of a violation of Title 21 U.S.
11 Code Section 846: first, that two or more persons entered the
12 conspiracy specified in the indictment, which here was a
13 conspiracy to distribute narcotics drugs; and second, that the
14 defendant knowingly and wilfully became a member of that
15 conspiracy.

16 THE COURT: If you went to trial, the government would
17 have to prove those elements beyond a reasonable doubt. Do you
18 understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. Now I'm going to discuss with
21 you the maximum penalties for this crime. The maximum means
22 the most that could possibly be imposed. It doesn't
23 necessarily mean that that's the sentence you will receive.
24 But you have to understand that by pleading guilty, you'll be
25 exposing yourself to the possibility of receiving any

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1 combination of punishments up to the maximum that I'm about to
2 describe.

3 So with respect to your liberty, the maximum term of
4 imprisonment for this crime is 20 years in prison. Do you
5 understand that?

6 THE INTERPRETER: Sorry. I couldn't understand.

7 THE COURT: The maximum sentence that could be imposed
8 is 20 years in prison. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: The term of imprisonment may be followed
11 by up to a term of life of supervised release, and there is a
12 mandatory minimum term of supervised release of three years.
13 Supervised release means that if you're sentenced to prison,
14 after your release from prison, you will be subject to the
15 supervision of the probation department. You will be required
16 to obey certain rules, and if you violate those rules, you can
17 be returned to prison without a jury trial to serve additional
18 time even beyond your original sentence. Do you understand
19 that?

20 THE DEFENDANT: Yes.

21 THE COURT: You should also understand that there's no
22 parole in the federal system, so if you're sentenced to prison,
23 you will not be released early on parole, although there is a
24 limited opportunity to earn credit for good behavior. Do you
25 understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: In addition to these restrictions on your
3 liberty, the maximum punishment for this crime includes certain
4 financial penalties. The maximum allowable fine for this crime
5 is \$1 million or twice the gain you received from the crime or
6 twice the loss to any victims, whichever is greater. I'm also
7 required to impose a mandatory \$100 special assessment. And I
8 must order restitution to any persons or entities injured as a
9 result of your criminal conduct, and I can order you to forfeit
10 all property derived from the offense or used to facilitate the
11 offense.

12 Do you understand that those are the maximum and
13 minimum -- and when I say minimum, I'm referring to the three
14 years' supervised release term -- penalties for this offense?
15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Is the defendant now serving a state or
18 federal sentence or being prosecuted in the state for any
19 crime?

20 MR. DeFILIPPIS: Your Honor, not that I'm aware of.

21 MR. HENRY: No, your Honor.

22 THE COURT: Okay. Now you should be aware that the
23 punishments I've just described are those that are part of the
24 sentence, but being convicted of a felony may have other
25 consequences, and I know we spoke about this once before, but I

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1 do want to make sure that you understand that as a result of
2 your guilty plea, you may be deported from the United States
3 and deportation may be mandatory. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. Have you discussed the possible
6 immigration consequences of your plea with your attorney?

7 THE DEFENDANT: Yes.

8 THE COURT: In imposing sentence, federal judges are
9 required to consider the recommendations of the federal
10 Sentencing Guidelines. The guidelines are a complicated set of
11 rules for determining an appropriate sentence. And although
12 judges must take into account the Sentencing Guidelines when
13 determining a sentence, in the end the judge is required to
14 give the sentence that she believes best satisfies the purposes
15 of the criminal law, whether it's higher or lower than the
16 guidelines recommendation. Have you discussed the Sentencing
17 Guidelines with your attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that they're only
20 recommendations to the Court?

21 THE DEFENDANT: Yes.

22 THE COURT: I understand that you have a written plea
23 agreement with the government, and I have what appears to be
24 the original plea agreement dated February 2, 2016, addressed
25 to your attorney and signed by the assistant United States

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1 attorney as well as the supervisor in that office. I'm going
2 to mark this as Court Exhibit 1. I'm going to ask my deputy,
3 Ms. Cavale, to show it to you.

4 Is that your signature on the last page?

5 THE DEFENDANT: Yes.

6 THE COURT: Was this document translated for you
7 before you signed it?

8 THE DEFENDANT: Yes.

9 THE COURT: And did you discuss it with your attorney
10 before you signed it?

11 THE DEFENDANT: Yes.

12 THE COURT: I realize that it's a long document, and
13 it contains some technical legal language, but after reviewing
14 it with your attorney and having it translated, do you
15 understand all the terms of this agreement?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. I'm going to just discuss some
18 of them with you.

19 I see, for example, that you and the government have
20 agreed that the appropriate guidelines sentence range, meaning
21 the range recommended by the Sentencing Guidelines, is 87 to
22 108 months in prison. Do you understand that that means that
23 neither you nor the government can argue for a different
24 guidelines calculation, although you can seek a sentence
25 outside of that range? Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: Okay. You should also understand that
3 this agreement does not bind me in any way. I'm required to
4 make my own independent calculation under the Sentencing
5 Guidelines and to impose a sentence based on what I believe is
6 the appropriate sentence. So you should understand that my
7 calculation may differ from the one that you and the government
8 have agreed to. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: I'm not saying that I will come up with a
11 range that's different, but if I do, I won't allow you to
12 withdraw your plea even if the range that I determine is higher
13 than the one you've agreed to with the government. Do you
14 understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Under the agreement you also admit to the
17 forfeiture allegation, is that correct?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Now under this agreement you are
20 giving up your right to appeal or otherwise challenge your
21 sentence as long as I sentence you to 108 months of
22 imprisonment or less. So if I sentence you to more than 108
23 months in prison, you have the right to appeal your sentence.
24 So if your sentence is 108 months or less, you cannot appeal it
25 under this agreement. Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you also understand that under this
3 agreement you cannot appeal your conviction or sentence on
4 direct appeal or otherwise by filing an action under 28 U.S.C.
5 2255 or 2241 on the basis of any actual or perceived
6 immigration consequences, including deportation resulting from
7 your guilty plea? Do you understand that? So even if you're
8 going to be deported, you can't appeal on that basis pursuant
9 to this agreement with the government. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. Do you also understand that under
12 this agreement you're waiving other rights of appeal, including
13 your right to appeal your plea based on the government's
14 failure to disclose exculpatory or other discovery material
15 that hasn't been produced to date? Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Does this written plea agreement
18 constitute the entirety of your agreement with the government?
19 In other words, do you understand that you have no other
20 agreement with the government other than what's in this
21 document?

22 THE DEFENDANT: Yes.

23 THE COURT: Did you willingly sign that agreement?

24 THE DEFENDANT: Yes.

25 THE COURT: Did anyone threaten, bribe, or force you

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1 to sign it?

2 THE DEFENDANT: No.

3 THE COURT: Other than what's in the plea agreement
4 has anyone offered you any inducement to plead guilty?

5 THE DEFENDANT: No.

6 THE COURT: Has anyone made any promise to you or
7 prediction as to what your sentence will be?

8 THE DEFENDANT: No.

9 THE COURT: Okay. So I just want to make sure you
10 understand that if anyone attempted to predict what your
11 sentence will be, their prediction could be wrong, and I say
12 that because no one -- not your attorney, not the prosecutor,
13 not even I -- can be sure today what your sentence will be, and
14 that won't be determined until I receive a presentence report,
15 until I've decided on the correct calculation of the range
16 recommended by the guidelines, and whether there is any basis
17 not to follow that, okay? So I just want to make sure you
18 don't have any expectations whatsoever, including based on your
19 participation in the Young Adult Opportunity Program. Do you
20 understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. So even if your sentence is
23 different from what you expected or predicted, once you've
24 pleaded guilty, you won't be allowed to withdraw your plea, all
25 right?

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1 THE DEFENDANT: Yes.

2 THE COURT: So now that you've been advised of the
3 charges against you and the possible penalties you face, I'm
4 going to ask you the official question:

5 With respect to the lesser included offense of Count
6 One of the indictment, how do you plead, guilty or not guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: Okay. In addition, do you admit or do you
9 not admit the forfeiture allegation in the indictment?

10 THE DEFENDANT: I do admit.

11 THE COURT: Okay. So now tell me in your own words
12 what you did that makes you believe you're guilty of this
13 crime.

14 THE DEFENDANT: Between November and December 2012, I
15 talked to a person to transport drugs to Philadelphia, and when
16 I did that, I did it knowing it was wrong, and that happened in
17 some areas of the Bronx.

18 THE COURT: Any additional questions the government
19 would like me to ask?

20 MR. DeFILIPPIS: Your Honor, he said that he talked to
21 a person about transporting drugs. If your Honor could inquire
22 as to whether he agreed to transport or did transport drugs.

23 THE COURT: Did you agree to transport drugs?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay. And those drugs were illegal drugs,

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1 narcotics?

2 THE DEFENDANT: They were illegal, yes.

3 THE COURT: Okay. Was that heroin in particular?

4 THE DEFENDANT: I didn't see what it was, but I knew
5 they were drugs.

6 THE COURT: Okay. Can you please summarize what the
7 government's evidence would be if you were to go to trial.

8 MR. DeFILIPPIS: Yes, your Honor. At trial the
9 government's evidence would consist principally of wiretap
10 recordings of the defendant and other members of the
11 conspiracy, it would consist of physical evidence, specifically
12 narcotics seized from a barbershop in the Bronx, and the
13 testimony of law enforcement witnesses who participated in
14 those seizures and of nonlaw enforcement witnesses, including
15 cooperating witnesses.

16 THE COURT: All right. Mr. Henry, do you know of any
17 valid defense that would prevail at trial?

18 MR. HENRY: No, your Honor.

19 THE COURT: All right. So Mr. Ullola, because you
20 acknowledge that you're in fact guilty as charged in the
21 indictment and because I'm satisfied that you understand your
22 rights, including your right to go to trial, that you're aware
23 of the consequences of your plea, including the sentence which
24 may be imposed, and because I find that you are knowingly and
25 voluntarily pleading guilty, I accept your guilty plea to the

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1 lesser included offense of Count One in the indictment.

2 At some point the probation department will want to
3 interview you in connection with the presentence report.

4 In light of the defendant's anticipated participation
5 in the Young Adult Opportunity Program, do you think it makes
6 sense to hold off on getting the presentence report?

7 MR. DeFILIPPIS: That's fine with the government, your
8 Honor.

9 THE COURT: Okay. Mr. Henry, does that make sense?

10 MR. HENRY: That's fine with me.

11 THE COURT: I think that way the report can
12 incorporate any participation.

13 And at some point prior to sentencing the government
14 must also submit a preliminary order of forfeiture if it does
15 intend to seek forfeiture against this defendant, okay?

16 When time comes for sentencing, please review my
17 rules. They're on the court website. Among other things,
18 defense submissions are due two weeks prior to sentencing and
19 the government's submission one week prior to sentencing.

20 Does the government have any objection to continuing
21 the current conditions of bail?

22 MR. DeFILIPPIS: No, your Honor. No objection.

23 THE COURT: All right. I do think, in light of the
24 anticipated participation in the program, that those are
25 extraordinary circumstances that justify Mr. Ullola staying out

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1 on bail pursuant to the same conditions, in spite of his plea.
2 All right? You should understand, though, that if you violate
3 any of the conditions of your bail that you may not only be
4 arrested for violation of bail conditions but you may be
5 charged with a separate crime of bail jumping if, for example,
6 you don't show up for court. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. All right. Are there any further
9 applications?

10 MR. DeFILIPPIS: Not from the government, your Honor.

11 THE COURT: All right. Mr. Henry?

12 MR. HENRY: No, your Honor. I will just say for the
13 record I received an email which I've sent to my client from
14 Ms. Blackford. He has a special report next Tuesday at 9:30 to
15 the probation office at 500 Pearl Street to do his first
16 interview with his supervisor, Ms. Mejia.

17 THE COURT: Good. Thank you.

18 And you just missed the first monthly meeting, which
19 took place on Tuesday evening, but you should remember,
20 Mr. Ullola, that it's the first Tuesday of every month at 5:30
21 that we meet and have the meetings as a group and with myself
22 and Judge Netburn.

23 MR. HENRY: I provided him also with an email with an
24 attachment which has each date the program will be and
25 directions about getting here at 5:15 in preparation for

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1 starting at 5:30.

2 THE COURT: Terrific. And we're going to have to get
3 a Spanish interpreter. He's the only Spanish speaker. Well,
4 he's not the only Spanish speaker; he's the only exclusive
5 Spanish speaker in the sense that he'll need a translator there
6 to assist him, but we'll make sure that he has one.

7 MR. HENRY: Thank you, your Honor. He's also started
8 English language classes as well.

9 THE COURT: Good. I'm glad to hear that.

10 All right. Well, I look forward to seeing you again,
11 Mr. Ullola, and until then, be good, okay? Thank you.

12 MR. HENRY: Thank you.

13 MR. DeFILIPPIS: Thank you, your Honor.

14 THE DEFENDANT: Thank you.

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